87-1783

NO.

in the

Supreme Court

of the

United States

October Term, 1987

WILLIAM A. BRACKENRIDGE,

Appellant,

vs.

AMETEK, INC., AMERICAN MACHINE AND METAL CO., TROY EQUIPMENT, INC. and BARING INDUSTRIES, INC.,

Appellees,

On Appeal From
The Supreme Court of Florida

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED FOR REVIEW

Whether a statute of repose can constitutionally be applied retroactively to bar causes of action which accrued and were filed after the statute was declared unconstitutional by a state's highest court and before the state reverses itself and declares the statute constitutional.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION AND STATUTE	2
STATEMENT OF THE CASE.....	3-7
SUBSTANTIAL FEDERAL QUESTION	7, 8
CONCLUSION	9
CERTIFICATE OF SERVICE	10

APPENDIX

1.a	Order Granting Defendants' Motion for Summary Final Judgment *Brackenridge v. Ametek Inc.* December 3, 1985	App. 1-App. 2
1.b	Florida Third District Court of Appeal Decision *Brackenridge v. Ametek, Inc.* 503 So.2d 363 (Fla. 3d DCA 1987) ...	App. 3-App. 4

TABLE OF CONTENTS (Continued)

Cases		Pages
1.c	Florida Supreme Court Decision Companion Case *Clausell v. Hobart Corp.*, 515 So.2d 1275 (Fla. 1987)	App. 5-App. 10
2.a	Florida Supreme Court Decision *Brackenridge v. Ametek, Inc.*, 517 So.2d 667 (Fla. 1987)	App. 11-App. 16
2.b	Florida Supreme Court Order Denying Motion for Rehearing *Brackenridge v. Ametek* Dated January 28, 1988	App. 17-App. 18
3.	Notice of Appeal to the United States Supreme Court dated May 29, 1988 .	App. 19-App. 20

TABLE OF AUTHORITIES

Cases	Pages
Battilla v. Allis Chalmers Manufacturing Co., 392 So.2d 874 (Fla. 1980)	3, 4, 6, 7
Brackenridge v. Ametek, Inc., 517 So.2d 667 (Fla. 1987)	1, 6 7, 8
Brackenridge v. Ametek, Inc., 503 So.2d 363 (Fla. 3d DCA 1987)	1, 5
Chapman v. State, 386 U.S. 18, *rehrg. denied*, 386 U.S. 987 (1967)	7
Chevron Oil Co. v. Huson, 404 U.S. 97 (1971)	8
Clausell v. Hobart Corp., 515 So.2d 1275 (Fla. 1987)	1, 6, 7
Eddings v. Volkswagenwerk, A.G., 635 F. Supp. 45 (N.D. Fla. 1986)	6
Hampton v. A. Duda & Sons, Inc., 511 So.2d 1104 (Fla. 5th DCA 1987)	6
Hartford Fire Insurance Co. v. Lawrence, 740 F.2d 1362 (6th Cir. 1954)	8

TABLE OF AUTHORITIES (Continued)

Cases	Pages
Logan v. Zimmerman Brush Co., 455 U.S. 422 (1980)	8
Martinez v. California, 444 U.S. 277 (1980)	8
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)	8
New Orleans Land Co. v. Brott, 263 U.S. 97 (1923)	8
Pullum v. Cincinnati, Inc., 476 So.2d 657 (Fla. 1985) *appeal dismissed* 475 U.S. 1114 (1986)	3, 5, 6
Shaw v. General Motors Corp., 503 So.2d 362 (Fla. 3d DCA 1987)	5
Other Authorities	
United States Constitution, XIV	2, 8, 9
28 U.S.C. §1257(2)	1
Florida Statute §95.031(2) (1975)	1, 2, 3, 5, 6

OPINIONS BELOW

The opinion of the Florida Supreme Court is reported as *Brackenridge v. Ametek, Inc.*, 517 So.2d 667 (Fla. 1987), and appears in the appendix at (App. 2a). The opinion of the Florida Third District Court of Appeal is reported as *Brackenridge v. Ametek, Inc.*, at 503 So.2d 363 (Fla. 3d DCA 1987) (per curiam), and appears at (App. 1b). The original opinion of the Florida Eleventh Judicial Circuit Court is unreported and appears at (App. 1a).

SIMILAR CASE PENDING

The Appellant, William Brackenridge, advises this Court that it is aware of a similar case pending on appeal to the United States Supreme Court, *Clausell v. Hobart Corp.*, Docket No. 87-1400, filed on March 21, 1988 which involves the same legal issue.

JURISDICTION

The opinion of the Florida Supreme Court declaring that Florida Statute §95.031(2) was constitutional when applied retroactively to the Appellant, William Brackenridge, was entered on December 3, 1987, rehearing denied on January 28, 1988. (App. 2a, App. 2b). A Notice of Appeal to this Court was filed on March 29, 1988 (App. 4). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Fourteenth Amendment, *Constitution of the United States:*

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .

The statute of repose—§95.031(2), *Fla. Stat.* (1975):

> (2) Actions for products liability under s.95.11(3) must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s.95.11(3), but in any event within 12 years after the date of delivery of the completed product to its original purchaser or within 12 years after the date of the commission of the alleged fraud, regardless of the date the defect in the product or the fraud was or should have been discovered.

STATEMENT OF THE CASE

This action for product liability draws in question the validity of the retroactive application of Florida's product liability statute of repose as revived by the Florida Supreme Court in the case of *Pullum v. Cincinnati, Inc.*, 476 So.2d 657 (Fla. 1985), *appeal dismissed*, 475 U.S. 1114 (1986). The Appellant attacks the constitutionality of said statute as applied to him, as violative of his Fourteenth Amendment Due Process rights.

In September of 1967 the laundry extractor involved in this litigation was manufactured and distributed by the Appellees, Ametek, Inc., American Machine and Metal Co., Troy Equipment, Inc. (hereinafter collectively referred to as Ametek) and Baring Industries, Inc. In 1974 the Florida legislature enacted a product liability statute of repose which went into effect in 1975. §95.031(2) *Fla. Stat.* (1975). The statute provided that an action for product liability must be commenced no later than twelve years after the date of delivery of the completed product to the original purchaser. *Id.*

On December 11, 1980, the Florida Supreme Court held the statute of repose was unconstitutional as it barred access to courts to litigants injured by products more than twelve years after the delivery date, in violation of Article I, Section 21, of the Florida Constitution. *Battilla v. Allis Chalmers Manufacturing Co.*, 392 So.2d 874 (Fla. 1980). *Battilla* involved a plaintiff like Brackenridge who was injured more than twelve years after the delivery of the defective product. The court held the statute unconstitutional as applied

to the plaintiff, as it completely barred the plaintiff's cause of action before it accrued. *Battilla* amended the statute of repose to provide that it was null and void as to plaintiffs who were injured by defective products more than twelve years after the delivery date of the defective product.

On December 14, 1982, the Appellant, William A. Brackenridge's arm was traumatically amputated by the Appellees' laundry extractor, fifteen years after its delivery date. On December 11, 1984 Brackenridge filed suit in the Florida Eleventh Circuit Court alleging negligence and strict liability.

On August 29, 1985, the Florida Supreme Court reversed its earlier decision in *Battilla* and declared that the statute of repose was *constitutional*, even as to injuries occuring more than twelve years after product delivery. *Pullum v. Cincinnati, Inc.*, 476 So.2d 657 (Fla. 1985). It did not state whether the statute of repose applied retroactively to accrued causes of action.

Throughout the proceedings below, Brackenridge has consistently argued that the statute of repose could not be applied to bar his cause of action as it would violate his federal due process rights. Brackenridge's basic argument is that on the day his arm was mutilated by the unguarded laundry extractor his right to his day in court to pursue damages against the manufacturer and distributor vested, and once vested, the state of Florida could not deprive him of that right without due process.

In the trial court, the Appellant filed a memorandum of law in support of his motion for summary judgment and in opposition to the Appellees' motion for summary judgment arguing that "Florida Statute §95.031(2) is unconstitutional as applied to this case." (R. 278-332). The trial court rejected his challenge and entered summary judgment against Brackenridge. (R. 468).

In his brief to the Florida Third District Court of Appeal Appellant reiterated that "Retroactive application [of the Florida product liability statute of repose] violates Brackenridge's Federal and State constitutional rights of due process." (Appellant's Initial Brief at 17). He argued that "The minimum due process protection which must be afforded Brackenridge is that the State's high court cannot extinguish a pending tort claim by retroactive application of a new law affecting substantive rights." (Appellant's Reply Brief at 4).

The district court of appeal affirmed, based on the companion case of *Shaw v. General Motors Corp.*, 503 So.2d 362 (Fla. 3d DCA 1987), which was aruged on the same day as *Brackenridge*. The Florida Third District Court of Appeal certified the issues to the Florida Supreme Court.

In the Florida Supreme Court the Appellant again challenged the constitutionality of retroactively applying the statute of repose. Brackenridge argued "Retroactive application of *Pullum* would also impair Federal due process rights," and "[t]he same constitutional dictates which prohibit retroactive legislation also prohibit the judiciary from impairing vested property rights." (Brief of Petitioner at 13-15).

In *Brackenridge*, the Florida Supreme Court expressly held that retroactive application of the statute of repose to Brackenridge did not deprive Brackenridge of property or contract rights. The court stated,

> In the instant case Brackenridge does not fall within the exception to the general rule. He was not deprived of a property or contract right acquired in reliance upon this Court's decision in *Battilla*. His accident was fortuitous and did not occur as a result of conduct prompted by *Battilla*. Moreover, he did not act in reliance on the *Battilla* declaration of the unconstitutionality of section 95.031(2) and thereby miss the limitation deadline for filing suit with which he could have otherwise complied. His expenditure of funds in the prosecution of the suit prior to *Pullum* did not constitute the acquisition of property or contract rights. *See Eddings v. Volkswagenwerk, A.G.*, 635 F.Supp. 45 (N.D. Fla. 1986). Since there was no detrimental reliance upon *Battilla*, the general rule dictates that *Pullum* be given retrospective application so as to bar his claim. *Accord Hampton v. A. Duda & Sons, Inc.*, 511 So.2d 1104 (Fla. 5th DCA 1987).

Brackenridge, 517 So.2d at 669 (1987).

In the companion case now pending before this Court, *Clausell v. Hobart Corp.*, 515 So.2d 1275 (Fla. 1987), the Florida Supreme Court expressly denied the claim that retroactive application of the product liability

statute of repose to causes of actions which had arisen and were pending while the statute was void violated due process rights. *Clausell* was decided on the same day as *Brackenridge* and addressed the same federal constitutional challenges raised by Brackenridge.

SUBSTANTIAL FEDERAL QUESTION

The substantial nature of the federal question involved in this appeal is discussed at length in the jurisdictional statement filed in *Clausell v. Hobart*, Case No. 87-1400.

Florida deprived Brackenridge of his federal due process rights by retroactively reviving a null and void statute so as to terminate his tort action which had accrued and was filed when the statute was "unconstitutional." A multitude of cases were in various stages of litigation in the Florida state and federal district courts when *Pullum* was decided, which cases have been dismissed regardless of the severity of the plaintiff's injury, the amount of time and money invested in the plaintiff's case, or the posture of the litigation. The statute of repose had not been enacted when the defendants manufactured and distributed the defective product, it was null and void pursuant to *Battilla* at the time Brackenridge was injured and filed suit, and was repealed while his appeal was pending. To deny him his day in court because he "fell between the cracks" violates his constitutional right to due process. The laws and remedies of the Constitution were designed to protect individuals from state infractions of federal rights and the responsibility for protecting those rights cannot be left to the states. *Chapman v. State*, 386 U.S. 18, *rehrg. denied* 386 U.S. 987 (1967).

The Supreme Court emphasized the value of this right in *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971). "[T]he respondent's potential redress for his allegedly serious injury—an injury that may significantly undercut his future earning power—is entitled to similar protection." *Id.* at 108.

The decision of the Florida Supreme Court that retroactive application of the statute of repose to bar already accrued causes of action, "does not deprive Brackenridge of a property right" conflicts with federal court decisions. *Brackenridge*, 517 So.2d at 668. In *Hartford Fire Insurance Co. v. Lawrence*, 740 F.2d 1362 (6th Cir. 1954), the court held that "A litigant has no vested property right in a cause of action *until it accrues.*" *Id.* at 1367. (Emphasis supplied).

This court has recognized that a state tort claim is a "species of property" protected by the Due Process Clause—*Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1980); *Martinez v. California*, 444 U.S. 277, 281-282 (1980); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

The Supreme Court's mandatory appellate jurisdiction to review state court decisions which expressly or necessarily uphold the validity of a state statute by enforcing it despite a claim of repugnance to the Constitution of the United States should be exercised here by accepting plenary review of this appeal, to insure that the state acknowledges the binding force and effect of controlling federal law. *New Orleans Land Co. v. Brott*, 263 U.S. 97 (1923).

CONCLUSION

The appeal involves a denial of due process as guaranteed by the Fourteenth Amendment. Plenary review should be granted.

Respectfully submitted,

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April 26, 1988

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing jurisdictional statement and appendix was mailed this 27th day of April, 1988 to Stroock & Stroock & Lavan, Attorneys for Ametek, Inc., 3300 S.E. Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131; Linda Koenisberg, Esquire, Law Offices of James O. Nelson, Attorneys for Baring, One Biscayne Tower, Suite 2628, Two South Biscayne Boulevard; William G. Liston, Esquire, Stephen R. Berger, P.A., Attorneys for Baring, 8525 S.W. 92 Street, Suite B-5, Miami, Florida 33156 and to The Honorable Robert A. Butterworth, Attorney General of the State of Florida, The Capitol, Tallahassee, Florida 32301.

George C. Vogelsang

GEORGE C. VOGELSANG

Appendix

APPENDIX 1.a

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 84-47740(21)

WILLIAM A. BRACKENRIDGE,

Plaintiff,

vs.

AMETEK, INC., AMERICAN MACHINE AND METAL CO., TROY LAUNDRY MACHINE CO., TROY EQUIPMENT, INC., and BARING INDUSTRIES, INC.,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY FINAL JUDGMENT

ENTRY OF SUMMARY FINAL JUDGMENT

THIS CAUSE having come before this Court the Motion for Partial Summary Judgment of plaintiff; and the Motion for Final Summary Judgment of defendant, BARING INDUSTRIES, INC., and, by stipulation, defendants AMETEK, INC., AMERICAN MACHINE AND METAL CO., TROY LAUNDRY MACHINE CO., and TROY EQUIPMENT, INC.; and the Court having heard argument of counsel, having reviewed the papers filed, and being full advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. Defendants' Motion for Summary Final Judgment is granted, and plaintiff's Motion for Partial Summary Judgment is denied.

2. Summary Final Judgment is entered in favor of Defendants, AMETEK, INC., AMERICAN MACHINE AND METAL CO., TROY LAUNDRY MACHINE CO., TROY EQUIPMENT INC., and BARING INDUSTRIES, INC., and against Plaintiff, WILLIAM A. BRACKENRIDGE, on the basis of *Pullum v. Cincinnati, Inc.*, ____ So. 2d ____ (Fla.1985) (10FLW 428).

DONE AND ORDERED in Chambers at Miami, Dade County, Florida this 3 day of Dec., 1985.

JOHN A. TANKSLEY, Circuit Judge
CIRCUIT JUDGE

Copies furnished:

Linda Koenigsberg, Esq.
George Vogelsang, Esq.
David C. Pollack, Esq.

APPENDIX 1.b

[363] William A. BRACKENRIDGE,

Appellant,

v.

AMETEK, INC. and Baring Industries, Inc.,

Appellees.

No. 85-2775.

District Court of Appeal of Florida,
Third District.

Feb. 10, 1987.

An Appeal from the Circuit Court for Dade County; John A. Tanksley, Judge.

Beth Tyler Vogelsang and George C. Vogelsang, Miami, for appellant.

Stroock, Stroock & Lavan and David C. Pollack and Ricardo Torres, Jr., James O. Nelson, Steven R. Berger and William G. Liston, Miami, for appellees.

Before HUBBART, BASKIN and DANIEL S. PEARSON, JJ.

PER CURIAM.

Affirmed on the authority of *Shaw v. General Motors Corp.*, 503 So.2d 362 (Fla. 3d DCA 1987). As in *Shaw*, we certify to the Supreme Court of Florida the following questions as being of great public importance:

[364] I. Should the legislative amendment of Section 95.031(2), Florida Statutes (1983), abolishing the statute of repose in product liability actions, be construed to operate retrospectively as to a cause of action which accrued before the effective date of the amendment?

II. If not, should the decision of *Pullum v. Cincinnati, Inc.*, 476 So.2d 657 (Fla.1985), *appeal dismissed*, ____ U.S. ____, 106 S.Ct. 1626, 90 L.Ed.2d 174 (1986), which overruled *Battilla v. Allis Chalmers Mfg. Co.*, 392 So.2d 874 (Fla.1980), apply so as to bar a cause of action that accrued after the *Battilla* decision but before the *Pullum* decision?

Affirmed.

APPENDIX 1.c

[1275] Alberto CLAUSELL, et al.,

Petitioners,

v.

HOBART CORPORATION,

Respondent.

No. 70566.

Supreme Court of Florida.

Dec. 3, 1987.

Appeal was taken from decision of the Circuit Court, Dade County, Phillip W. Knight, J., in product liability action. The District Court of Appeal, 506 So.2d 1160, affirmed and certified questions of great public importance. Application for review was granted. The Supreme Court, Grimes, J., held that plaintiff had no vested right in cause of action and, therefore, would suffer no deprivation of due process by retroactive application of Supreme Court opinion.

Questions answered.

Constitutional Law —253(4)

Plaintiff had no vested right in cause of action and, therefore, would suffer no deprivation of due process by

retroactive application of Supreme Court opinion, which upheld validity of statute of repose in product liability action and which overruled prior decision finding statute unconstitutional. U.S.C.A. Const.Amends. 5, 14; West's F.S.A. §§ 95.031, 95.031(2).

Joel P. Perwin of Podhurst, Orseck, Parks, Josefsberg, Eaton, Meadow & Olin, P.A., and Spence, Payne, Masington, Grossman & Needle, P.A., Miami, for petitioners.

James E. Tribble and Anthony D. Dwyer of Blackwell, Walker, Fascell & Hoehl, Miami, for respondent.

GRIMES, Justice.

We review *Clausell v. Hobart Corp.*, 506 So.2d 1160 (Fla. 3d DCA 1987), to answer three certified questions of great public importance. Art. V, § 3(b)(4), Fla.Const. The certified questions are as follows:

> I. WHETHER THE LEGISLATIVE AMENDMENT OF SECTION 95-031(2), FLORIDA STATUTES (1983), ABOLISHING THE STATUTE OF REPOSE IN PRODUCT LIABILITY ACTIONS, SHOULD BE CONSTRUED TO OPERATE RETROSPECTIVELY AS TO A CAUSE OF ACTION WHICH ACCRUED BEFORE THE EFFECTIVE DATE OF THE AMENDMENT?

II. IF NOT, WHETHER THE DECISION OF *PULLUM v. CINCINNATI, INC.*, 476 SO.2D 657 (FLA.1985), *APPEAL DISMISSED*, 475 U.S. 1114, 106 S.CT. 1626, 90 L.ED.2D 174 (1986), WHICH OVERRULED *BATTILLA v. ALLIS CHALMERS MFG. CO.*, 392 SO.2D 874 (FLA.1980), APPLIES SO AS TO BAR A CAUSE OF ACTION THAT ACCRUED AFTER THE *BATTILLA* DECISION BUT BEFORE THE *PULLUM* DECISION?

III. WOULD THE APPLICATION OF *PULLUM*, TO BAR A CAUSE OF ACTION THAT ACCRUED AFTER THE *BATTILLA* DECISION BUT BEFORE THE *PULLUM* DECISION, DEPRIVE THE PLAINTIFF OF A RIGHT OF DUE PROCESS GUARANTEED BY THE UNITED STATES CONSTITUTION?

Id. at 1160–61. We recently answered the first question in the negative and the second question in the affirmative in *Melendez v. Dreis & Krump Manufacturing Co.*, 515 So.2d 735 (Fla.1987).

With reference to the third certified question, Clausell argues that the retroactive application of *Pullum* to his cause of action violates his right to due process under the United States Constitution. We find this claim unfounded. Several years ago in *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438

U.S. 59, 88, 98 S.Ct. 2620, 2638, 57 L.Ed.2d 595 (1978), the United States Supreme Court noted that "[o]ur cases have clearly established that '[a] person has no property, no vested interest, in any rule of the common [1276] law.' " *See also Ducharme v. Merrill-National Laboratories,* 574 F.2d 1307, 1309 (5th Cir.), *cert. denied,* 439 U.S. 1002, 99 S.Ct. 612, 58 L.Ed.2d 677 (1978) ("it is well settled that a plaintiff has no vested right in any tort claim for damages under state law"). More recently, in *Logan v. Zimmerman Brush Co.,* 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982), the Court acknowledged that a cause of action is a species of property but pointed out that the state remained free to create substantive defenses or immunities for use in adjudication.

The Federal District Court in *Lamb v. Volkswagenwerk Aktiengesellschaft,* 631 F.Supp. 1144 (S.D.Fla.1986), rejected the very argument advanced by Clausell when it stated:

> While the instant Plaintiff correctly posits that a statute may not be retroactively applied to deprive a party of a vested right, such a situation simply does not exist here. "A statute is not unconstitutionally retrospective in its operation unless it impairs a substantive, vested right. A substantive vested right is an immediate right of present enjoyment, or a present fixed right of future enjoyment." *In re Will of Martell,* 457 So.2d 1064, 1067 (Fla. 2d DCA 1984). "To be vested a right must be *more than a mere expectation based on an*

> *anticipation of the continuance of an existing law;* it must have become a title, legal or equitable, to the present or future enforcement of a demand." *Division of Workers' Compensation v. Brevda,* 420 So.2d 887, 891 (Fla. 1st DCA 1982) (emphasis added). The Plaintiff in the instant case had no vested contract or property right prior to the *Pullum* decision; instead Plaintiff was merely pursuing a common law tort theory to recover damages.

631 F.Supp. at 1149.

Another federal district court reached the same conclusion in *Eddings v. Volkswagenwerk, A.G.,* 635 F.Supp. 45 (N.D.Fla.1986), when it said:

> *Pullum,* receding from *Battilla,* held the statute was not unconstitutional. No cause of action was created by the statute and *Battilla* vested in plaintiffs no cause of action. It removed the bar of the statute to plaintiffs' assertion of a cause of action. But plaintiffs had, at most, a mere expectation that they had a cause of action they could pursue, and a subsequent decision, holding the statute to be constitutional, could not and does not deprive them of any vested rights.

Id. at 47.

Section 95.031 provided a defense to a cause of action rather than creating a cause of action. In *Battilla* the court simply held section 95.031(2) unconstitutional as

applied to the facts of that case. When *Pullum* was decided, the statute became valid *ab initio* and was restored to its operative force. Since Clausell had no vested right in his cause of action, he suffered no deprivation of due process under the United States Constitution. Consequently, we answer the third certified question in the negative and approve the decision of the district court of appeal.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, BARKETT and KOGAN, JJ. concur.

APPENDIX 2.a

[667] William A. BRACKENRIDGE,

Petitioner,

v.

AMETEK, INC. and Baring Industries, Inc.,

Respondents.

No. 70099.

Supreme Court of Florida.

Dec. 3, 1987.

Rehearing Denied Jan. 28, 1988.

Plaintiff brought products liability suit more than 12 years after product's delivery to original purchaser. The District Court of Appeal certified question of great public [668] importance, 503 So.2d 363. The Supreme Court, Grimes, J., held that state Supreme Court decision overruling prior decision by upholding constitutionality of 12-year products liability statute of repose could be retroactively applied to bar as untimely products liability suit commenced after prior decision.

Decision approved.

1. **Courts —100(1)**

Where property or contract rights have been acquired under and in accordance with previous statutory construction of Supreme Court, such rights should not be destroyed by giving retrospective operation to subsequent overruling decision.

2. **Courts —100(1)**

State Supreme Court decision overruling its prior decision by upholding constitutionality of 12-year products liability statute of repose could be retroactively applied to bar as untimely products liability suit commenced after prior decision; plaintiff did not act in reliance on prior decision and thereby miss limitation deadline for filing suit with which he could have otherwise complied, and he was not deprived of property or contract right acquired in reliance upon prior decision. West's F.S.A. § 95.031(2).

Beth Tyler Vogelsang of the Vogelsang Law Firm, Miami, for petitioner.

David C. Pollack and Ricardo Torres, Jr. of Stroock & Stroock & Lavan, Miami, for Ametek, Inc.

Law Offices of James O. Nelson, and Steven R. Berger and William G. Liston of Steven R. Berger, P.A., Miami, for Baring Industries.

GRIMES, Justice.

Pursuant to article V, section 3(b)(4) of the Florida Constitution, we review the decision of the Third District Court of Appeal upon questions certified to be of great public importance. *Brackenridge v. Ametek, Inc.*, 503 So.2d 363 (Fla. 3d DCA 1987).

Brackenridge was injured by a laundry extractor more than twelve years after its delivery to the original purchaser. In affirming the dismissal of his product liability action, the court certified the following questions:

> I. SHOULD THE LEGISLATIVE AMENDMENT OF SECTION 95.031(2), FLORIDA STATUTES (1983), ABOLISHING THE STATUTE OF REPOSE IN PRODUCT LIABILITY ACTIONS, BE CONSTRUED TO OPERATE RETROSPECTIVELY AS TO A CAUSE OF ACTION WHICH ACCRUED BEFORE THE EFFECTIVE DATE OF THE AMENDMENT?
>
> II. IF NOT, SHOULD THE DECISION OF *PULLUM v. CINCINNATI, INC.*, 476 SO.2D 657 (FLA.1985), *APPEAL DISMISSED*, [475] U.S. [1114], 106 S.CT. 1626, 90 L.ED.2D 174 (1986), WHICH OVERRULED *BATTILLA v. ALLIS CHALMERS MFG. CO.*, 392 SO.2D 874 (FLA.1980), APPLY SO AS TO BAR A CAUSE OF ACTION THAT ACCRUED AFTER THE *BATTILLA* DECISION BUT BEFORE THE *PULLUM* DECISION?

Brackenridge, 503 So.2d at 364. We recently answered the first question in the negative and the second question in the affirmative in *Melendez v. Dries & Krump Manufacturing Co.*, 515 So.2d 735 (Fla.1987).

[1] Because it was not specifically discussed in the *Melendez* opinion, we will address the contention that in spite of this Court's opinion in *Pullum v. Cincinnati, Inc.*, 476 So.2d 657 (Fla.1985), upholding the constitutionality of section 95.031(2), Brackenridge is entitled to relief because he relied upon our earlier decision of *Battilla v. Allis Chalmers Manufacturing Co.*, 392 So.2d 874 (Fla.1980), which declared the statute unconstitutional as applied. As stated in *Melendez*, it is a general rule that a decision of a court of last resort which overrules a prior decision is retrospective as well as prospective in its operation unless declared by the opinion to [669] have prospective effect only. However, there is an exception to the rule which provides that where property or contract rights have been acquired under and in accordance with a previous statutory construction of the supreme court, such rights should not be destroyed by giving the retrospective operation to a subsequent overruling decision. *Department of Revenue v. Anderson*, 389 So.2d 1034 (Fla. 1st DCA 1980).

The application of the exception to the rule is illustrated in *Florida Forest & Park Service v. Strickland*, 154 Fla. 472, 18 So. 2d 251 (1944), in which a workers' compensation claimant had appealed an adverse decision to the circuit court in accordance with existing law. After the circuit court had ruled in favor of the claimant but while the case was still on appeal,

the supreme court had overruled a prior decision and held that those seeking review of decisions of deputy commissioners in workers' compensation cases must first exhaust their remedies by way of appeal to the Florida Industrial Commission. The *Strickland* court recognized that the claimant had relied on existing procedures when he appealed to the circuit court and refused to penalize him for failing to appeal to the Florida Industrial Commission when he had no reason to know that he should do so.

[2] In the instant case Brackenridge does not fall within the exception to the general rule. He was not deprived of a property or contract right acquired in reliance upon this Court's decision in *Battilla.* His accident was fortuitous and did not occur as a result of conduct prompted by *Battilla.* Moreover, he did not act in reliance on the *Battilla* declaration of the unconstitutionality of section 95.031(2) and thereby miss the limitation deadline for filing suit with which he could have otherwise complied. His expenditure of funds in the prosecution of the suit prior to *Pullum* did not constitute the acquisition of property or contract rights. *See Eddings v. Volkswagenwerk, A.G.,* 635 F.Supp. 45 (N.D.Fla.1986). Since there was no detrimental reliance upon *Battilla,* the general rule dictates that *Pullum* be given retrospective application so as to bar his claim. *Accord Hampton v. A. Duda & Sons, Inc.,* 511 So.2d 1104 (Fla. 5th DCA 1987).

We approve the decision of the district court of appeal.

It is so ordered.

McDONALD, C.J., and OVERTON, EHRLICH, SHAW, BARKETT and KOGAN, JJ., concur.

APPENDIX 2.b

Supreme Court of Florida

THURSDAY, JANUARY 28, 1988

CASE NO. 70,099

District Court of Appeal,
3d District—No. 85-2775

WILLIAM A. BRACKENRIDGE,

Petitioner,

v.

AMETEK, INC., et al.,

Respondents.

Upon consideration of the Motion for Rehearing filed in the above cause by attorney for petitioner, and response thereto,

IT IS ORDERED that said Motion be and the same is hereby denied.

TC

cc: Hon. Louis J. Spallone, Clerk
Hon. John A. Tanksley, Judge
Hon. Richard P. Brinker, Clerk

Bety Tyler Vogelsang, Esquire
James O. Nelson, Esquire
Steven R. Berger, Esquire
Ricardo Torres, Jr., Esquire

A True Copy

TEST

(Seal Supreme Court of State of Florida)

By: /s/ Tanya Carrall
Deputy Clerk
Sid L White
Clerk Supreme Court.

APPENDIX 3.

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70-099

WILLIAM A. BRACKENRIDGE,

Petitioner,

vs.

AMETEK, INC. and BARING INDUSTRIES, INC.,

Respondents.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the Petitioner, WILLIAM A. BRACKENRIDGE, hereby appeals to the Supreme Court of the United States from the final order of the Florida Supreme Court entered herein on December 3, 1987, rehearing timely filed on December 18, 1987 and denied on January 28, 1988.

This appeal is taken pursuant to 28 USC §1257(2).

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 29th day of March, 1988 to Stroock & Stroock & Lavan, Attorney for Respondent, Ametek, Inc., 3300 S. E. Financial Center, 200 South Biscayne Boulevard, Miami, Florida 33131; Linda Koenisberg, Esquire, Law Offices of Jams O. Nelson,

Attorneys for Baring, One Biscayne Tower, Suite 2628, Two South Biscayne Boulevard, Miami, Florida 33131 and William G. Liston, Esquire, Stephen R. Berger, P.A. Attorneys for Baring, 8525 S. W. 92 Street, Suite B-5, Miami, Forida 33156.

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By:_____
BETH TYLER VOGELSANG